

The Texas Education Agency (TEA) proposes an amendment to §101.4002, concerning end-of-course (EOC) substitute assessments for graduation. The proposed amendment would modify the rule to reflect changes in statute made by Senate Bill (SB) 213, 86th Texas Legislature, 2019. The proposed amendment would modify the rule to align Texas assessment and accountability policies with federal requirements.

BACKGROUND INFORMATION AND JUSTIFICATION Section 101.4002 specifies the assessments the commissioner of education recommends as substitute assessments that a student may use to meet EOC assessment graduation requirements and establishes the cut scores needed for graduation purposes. The proposed amendment would update the language to be in alignment with state and federal laws. There are no changes to the substitute assessments allowed or the required scores indicated in the figure in subsection (b).

In December 2018, the U.S. Department of Education (USDE) issued an action item following a federal monitoring visit requiring Texas to cease the use of substitute assessments for accountability purposes. In March 2019, the TEA responded to the USDE asking for additional time to determine options for continuing this policy while remaining compliant with federal law. TEA has extensively explored options and determined that our state policy on substitute assessments cannot be successfully reconciled with federal accountability statute. As a result, beginning with the 2020 accountability cycle, substitute assessments will not be included in state or federal accountability calculations. Under the Elementary and Secondary Education Act of 1965 (ESEA), a state is required to adopt and administer the same academic assessments to measure the achievement of all public-school students in the state. Furthermore, states are required to include these assessment results in the accountability system. As such, the proposed amendment would add subsection (c)(1) to require students to take an EOC assessment at least once for federal accountability purposes prior to being eligible to use a substitute assessment to meet graduation purposes. Substitute assessments will continue to be an option for students to meet state graduation requirements.

SB 213, 86th Texas Legislature, 2019, amended the TEC, §39.025(a-3), to extend the expiration date of the provision that allows eligible students to qualify to use the Texas Success Initiative assessment as a substitute assessment to September 1, 2023. To implement SB 213, the proposed amendment would modify subsection (d)(2)(B) by extending the expiration date to September 1, 2023.

The proposed amendment would modify the language in subsection (e) to require students to take an EOC assessment at least once for the purpose of federal accountability based on ESEA requirements. The proposed amendment would also modify the language in subsection (e) to remove the reference to "the substitute assessment bubble" as that bubble will no longer be included on answer documents for EOC assessments.

The proposed amendment would clarify the names of the assessments in subsection (f) to allow a student to use qualifying scores on PSAT, PLAN, or Aspire tests if he or she has taken that test and a corresponding EOC assessment and failed both. "PSAT" would replace "PSAT-related assessment," which includes all forms of the PSAT and PSAT/NMSQT. "PLAN or Aspire" would replace "pre-ACT" to be more specific.

FISCAL IMPACT: Lily Laux, deputy commissioner for school programs, has determined that for the first five-year period the proposal is in effect there are no additional costs to state or local government, including school districts and open-enrollment charter schools, required to comply with the proposal.

LOCAL EMPLOYMENT IMPACT: The proposal has no effect on local economy; therefore, no local employment impact statement is required under Texas Government Code, §2001.022.

SMALL BUSINESS, MICROBUSINESS, AND RURAL COMMUNITY IMPACT: The proposal has no direct adverse economic impact for small businesses, microbusinesses, or rural communities; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

COST INCREASE TO REGULATED PERSONS: The proposal does not impose a cost on regulated persons, another state agency, a special district, or a local government and, therefore, is not subject to Texas Government Code, §2001.0045.

TAKINGS IMPACT ASSESSMENT: The proposal does not impose a burden on private real property and, therefore, does not constitute a taking under Texas Government Code, §2007.043.

GOVERNMENT GROWTH IMPACT: TEA staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. During the first five years the proposed rulemaking would be in effect, it would expand an existing regulation due to the extension of the expiration date and increase the number of individuals subject to the rule's applicability by allowing more students to obtain high school diplomas in specific circumstances. However, the proposed rulemaking would limit an existing regulation due to federal accountability requirements and decrease the overall number of individuals subject to the rule's applicability since more students will meet assessment graduation requirements with EOC assessments (which they have to take first) instead of substitute assessments.

The proposed rulemaking would not create or eliminate a government program; would not require the creation of new employee positions or elimination of existing employee positions; would not require an increase or decrease in future legislative appropriations to the agency; would not require an increase or decrease in fees paid to the agency; would not create a new regulation; would not repeal an existing regulation; and would not positively or adversely affect the state's economy.

PUBLIC BENEFIT AND COST TO PERSONS: Ms. Laux has determined that for each year of the first five years the proposal is in effect, the public benefit anticipated as a result of enforcing the proposal would be ensuring that rule language is in alignment with current state and federal law. There is no anticipated economic cost to persons who are required to comply with the proposal.

DATA AND REPORTING IMPACT: The proposal would have no data and reporting impact.

PRINCIPAL AND CLASSROOM TEACHER PAPERWORK REQUIREMENTS: The TEA has determined that the proposal would not require a written report or other paperwork to be completed by a principal or classroom teacher.

PUBLIC COMMENTS: The public comment period on the proposal begins October 11, 2019, and ends November 12, 2019. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on October 11, 2019. A form for submitting public comments is available on the TEA website at [https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_\(TAC\)/Proposed_Commissioner_of_Education_Rules/](https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_(TAC)/Proposed_Commissioner_of_Education_Rules/). Comments on the proposal may also be submitted to Cristina De La Fuente-Valadez, Rulemaking, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701.

STATUTORY AUTHORITY. The amendment is proposed under Texas Education Code (TEC), §39.023(c), which requires the agency to adopt end-of-course (EOC) assessment instruments for secondary-level courses in Algebra I, biology, English I, English II, and United States history; TEC, §39.025, which establishes the secondary-level performance required to receive a Texas high school diploma; TEC, §39.025(a), which requires the commissioner of education to adopt rules requiring students to achieve satisfactory performance on each EOC assessment listed under TEC, §39.023(c), in order to receive a Texas high school diploma; TEC, §39.025(a-1), (a-2), and (a-3), which allow for the use of specific substitute assessments to satisfy the EOC assessment graduation requirements under certain conditions; TEC, §39.025(a-3), as amended by SB 213, 86th Texas Legislature, 2019, which extends the expiration date to allow a student who has failed to perform satisfactorily on EOC assessment instruments to use the Texas Success Initiative assessment as a substitute assessment to meet graduation requirements. The expiration date changed from September 1, 2019, to September 1, 2023; and the Elementary and Secondary Education Act of 1965, as amended by the Every Student Succeeds Act, §1111(b)(2)(B)(i) and (vii), which requires the same academic assessments to be used to measure the achievement of all public-school students in the state and all students must participate in the assessments with few exceptions (e.g., students with significant cognitive disabilities).

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §39.023, as amended by House Bill 3906, 86th Texas Legislature, 2019; §39.025, as amended by Senate Bill 213, 86th Texas Legislature, 2019; and the Elementary and Secondary Education Act of 1965, as amended by the Every Student Succeeds Act, §1111(b)(2)(B).

<rule>

§101.4002. State of Texas Assessments of Academic Readiness End-of-Course Substitute Assessments.

- (a) For purposes of this subchapter, "equivalent course" is defined as a course having sufficient content overlap with the essential knowledge and skills of a similar course in the same content area listed under §74.1(b)(1)-(4) of this title (relating to Essential Knowledge and Skills).
- (b) Effective beginning with the 2011-2012 school year, in accordance with the Texas Education Code (TEC), §39.025(a-1), (a-2), and (a-3), the commissioner of education adopts certain assessments as provided in the chart in this subsection as substitute assessments that a student may use in place of a corresponding end-of-course (EOC) assessment under the TEC, §39.023(c), to meet the student's assessment graduation requirements. A satisfactory score on an approved substitute assessment may be used in place of only one specific EOC assessment, except in those cases described by subsection (d)(1) of this section.

Figure: 19 TAC §101.4002(b) (No change.)

- (c) A student at any grade level is eligible to use a substitute assessment as provided in the chart in subsection (b) of this section if:
 - (1) a student has not been successful on the corresponding EOC assessment after taking the assessment at least once;
 - (2) ~~(1)~~ a student was administered an approved substitute assessment for an equivalent course in which the student was enrolled;
 - (3) ~~(2)~~ a student received a satisfactory score on the substitute assessment as determined by the commissioner and provided in the chart in subsection (b) of this section; and
 - (4) ~~(3)~~ a student using a Texas Success Initiative (TSI) assessment also meets the requirements of subsection (d) of this section.
- (d) Effective beginning with the 2014-2015 school year, a student must meet criteria established in paragraph (1) or (2) of this subsection in order to qualify to use TSI as a substitute assessment.
 - (1) A student must have been enrolled in a college preparatory course for English language arts (PEIMS code CP110100) or mathematics (PEIMS code CP111200) and, in accordance with the TEC, §39.025(a-1), have been administered an appropriate TSI assessment at the end of that course.
 - (A) A student under this paragraph who meets all three TSI English language arts score requirements provided in the chart in subsection (b) of this section satisfies both the English I and English II EOC assessment graduation requirements.
 - (B) A student under this paragraph may satisfy an assessment graduation requirement in such a manner regardless of previous performance on an Algebra I, English I, or English II EOC assessment.
 - (2) In accordance with the TEC, §39.025(a-3), a student who has not been successful on the Algebra I or English II EOC assessment after taking the assessment at least two times may use the corresponding TSI assessment in place of that EOC assessment.
 - (A) For a student under this paragraph who took separate reading and writing assessments for the English II EOC assessment and who did not meet the English II assessment graduation requirement using those tests as specified in §101.3022(b) of this title (relating to Assessment Requirements for Graduation), the separate TSI reading or writing assessment may not be used to substitute for the corresponding English II reading or writing EOC assessment.
 - (B) The provisions of this paragraph expire September 1, 2023 ~~[2019]~~ . A student may meet the assessment graduation requirements under this paragraph using TSI if the student has

met the necessary score requirements as specified in subsection (b) of this section prior to September 1, 2023 [~~2019~~] .

- (e) A student electing to substitute an assessment for graduation purposes must still take the corresponding EOC assessment required under the TEC, §39.023(c), at least once for federal accountability purposes [~~unless the student met the requirements specified in subsection (e) of this section~~] . If a student sits for an EOC assessment, a school district may not void or invalidate the test in lieu of a [~~mark the~~] substitute assessment [~~bubble for that administration~~] .
- (f) A student who fails to perform satisfactorily on a PSAT, PLAN, or Aspire [~~PSAT-related assessment or pre-ACT~~] test (or any versions of these tests) as indicated in the chart in subsection (b) of this section must take the appropriate EOC assessment required under the TEC, §39.023(c). However, a student who does not receive a passing score on the EOC assessment and retakes a PSAT, PLAN, or Aspire [~~PSAT-related assessment or pre-ACT~~] test (or any versions of these tests) is eligible to meet the requirements specified in subsection (c) of this section.